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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 *In re: Hyundai and Kia Engine Litigation*

8:17-cv-00838-JLS-JDE

Related Cases:

8:17-cv-01365-JLS-JDE

8:17-cv-02208-JLS-JDE

2:18-cv-05255-JLS-JDE

8:18-cv-00622-JLS-JDE

8:18-cv-02223-JLS-JDE

**RESPONSE TO OBJECTIONS TO
THE PROPOSED CLASS ACTION
SETTLEMENT**

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1 **Introduction**

2 In a settlement covering more than 3.9 million Class Vehicles, only 49
3 objections have been submitted. See Declarations of Bonner Walsh, Dkt. 150-1 and
4 Dkt. 161-1. Of these 49, three are not Class members, four are requests to appear at
5 the fairness hearing with no objection provided¹, one is a comment, and four have
6 been withdrawn or resolved.

7 The bulk of the remaining 37 objections properly before the Court can be
8 largely categorized as those who misunderstand the terms of the Settlement; those
9 whose complaints are unrelated to the Settlement; and those who want more than the
10 Settlement offers. The remaining handful are attorney objectors and an automotive
11 business with an ongoing lawsuit against Hyundai.

12 No government entity has objected, nor have any public interest groups.

13 None of these objections provide any grounds to reject the Settlement.
14

15 **Objectors Who Misunderstood The Settlement And Are Actually** 16 **Entitled To Benefits**

17 Fifteen Class Members objected because they mistakenly believed that they
18 were not entitled to settlement benefits.

19 For example, some believed that vehicles with low mileage did not qualify for
20 any benefits,² and that used vehicles did not qualify for the lifetime warranty.³
21 However, Settlement benefits are not contingent on mileage or prior ownership.
22 Others believed that they could not submit claims for financial damages such as past
23 trade-ins for vehicles of a different make, or past sales of Class Vehicles.⁴ But Class
24

25 ¹ Joshua Hursa, Dkt. 150-1 p. 76; Stephen K. Jones Dkt. 161-1 p. 189-190,
Kravchenko Dmitriy, Dkt. 161-1 p. 192; and Maryia M. Kabuya, Dkt. 161-1 p. 194.

26 ² Dennis Spencer Kahane, Dkt. 150-1 p. 87.

27 ³ James E. Langford, Dkt. 150-1 p. 186.

28 ⁴ Gerald Cornelius Frank, Dkt. 150-1 pp. 58-59; Carrie A. Takamatsu, Dkt. 150-1 p.

Members can submit claims to recoup lost value on sales, trade-ins, or insurance for engine fires. In addition, Class Members can make a claim for other financial losses under the “other costs incurred” section of the Claim Form on page 2 where it specifically includes “financing-based damages”. Class members have until April 12, 2021 to file such claims for their financial losses.

Class Counsel have contacted these objectors and are working to inform them of their rights under the Settlement and resolve their concerns. So far, three have withdrawn their objections.⁵

Objectors Whose Issues Are Outside The Scope Of The Settlement

Some objectors complained about issues unrelated to the Settlement. There are three objectors who do not have Class Vehicles⁶ and one did not provide contact information, VIN, or other context.⁷ Others complained about individual mechanical problems with their vehicles: one objector requested a warranty on door

222-223; Jennifer Canelos, Dkt. 150-1 p.40 (Ms. Canelos also refers to a “\$50 offer,” which is not part of the Settlement); Dale C. Huebener, Dkt. 150-1 p. 75; Eric Evan Greene, Dkt. 150-1 p. 71; Tamera Colcord, Dkt. 150-1, p. 45; Zhaleh Khosravi and Ehsan Naderi, Dkt. 150-1 p. 88; Wilfredo Rosa, Dkt. 150-1 p. 212; and Douglas A. Banich, Dkt. 150-1 p. 4. Lordis V. Lynn Cotton and Calvin Cotton suffered a similar loss when their vehicle was totaled in an accident. Dkt.161-1 p. 163-165.

⁵ Roberta Lawther, Richard Nilles, and Christopher A. Wright have withdrawn their objections. Decl. Bonner Walsh (“Walsh Decl.”), Exhibit 1. The concerns of Megan S. Jones and Derek H. Jones have been addressed and, in accordance with Rule 23, Hyundai Motor America plans to file a motion seeking Court approval of their proposed resolution in advance of the final approval hearing.

⁶ The VINs provided by Frank Bergkvist, Tennie Kruse, Dkt. 150-1 p. 180-181, and John Caro, Dkt. 161-1 p. 177-179 are not Class Vehicles. Walsh Decl. at ¶ 7.

⁷ Joshua S. Hursa, Dkt. 150-1 p. 77. Due to the lack of information provided by Mr. Hursa, it is impossible to tell if he is a Class member or if he intended to object. Walsh Decl. at ¶ 8.

1 handles⁸ and another complained about a problem with the wiring harness.⁹ Claims
 2 not related to the short engine block are not released under the Settlement. Other
 3 objections concerned general dissatisfaction with Hyundai vehicles,¹⁰ that no Kia
 4 dealerships were convenient to their residence;¹¹ and a Kia dealer's inability to
 5 diagnose the vehicle's issues.¹² These are all individual issues that do not form a
 6 basis for criticism of the Settlement.

7 However, some objectors complained about oil consumption issues,¹³ and
 8 some these may be related to the engine defect. These issues should be addressed in
 9 the first instance with a diagnostic inspection (free under the Lifetime Warranty, and
 10 free regardless of symptom or warranty for 90 days after final approval). Once the
 11 issue is properly diagnosed, if it is related to the engine defect, repairs will be free
 12 under the Lifetime Warranty.

13 These objections are not grounds to reject the Settlement.

14 15 **Objectors Dissatisfied With The Offered Relief**

16 Some Class members objected because they want additional or different relief
 17 under the Settlement. Some requested new engines for everyone,¹⁴ cash for
 18

19 _____
 20 ⁸ Mike Brennan, Dkt. 150-1 p. 38.

21 ⁹ William Joseph Dill, Dkt. 150-1 p. 53.

22 ¹⁰ Dale C. Huebener, Dkt. 150-1 p. 75

23 ¹¹ Ronald A. Wallace, Dkt. 150-1 p. 249.

24 ¹² Zhong Liu, 150-1 p. 193 Mr. Liu describes malfunctions that might be related to
 the engine defect. But rather than a highlight a flaw in the Settlement, his objection
 demonstrates the value of the free diagnostic, lifetime warranty, and the KSDS.

25 ¹³ Theresa Ann LaBree, Dkt. 150-1 p. 183; Darlene K. Dotson Dkt. 161-1 p. 14,
 Braunwynn Franklin Dkt. 161-1 p. 4; Darlene Bennett, Dkt. 150-1 p29; Kelvin
 Bennett, Dkt. 150-1 p. 34.

26 ¹⁴ Ginny N. Graham and Michael A. Graham Dkt. 150-1 p. 66; Jean G. F. Card, Dkt.
 27 161-1 p. 35-36 (engine replacements); Clayton N. Saettel and Diane M. Saettel, Dkt.
 28 150-1 p. 215; Maria Theresa and Laura Flores Dkt. 150-1 p. 56.

1 everyone,¹⁵ full refunds,¹⁶ double Blue Book value plus a \$10,000 credit,¹⁷ and a
 2 lifetime warranty for the entire engine, not just the short block.¹⁸ Others requested
 3 additional relief based on their individual circumstances.¹⁹

4 However, that alternative or more favorable settlement terms can be imagined
 5 provides no basis to reject a fair and adequate settlement achieved through
 6 adversarial litigation and arduous, arm's length negotiations. A settlement is "a
 7 yielding of absolutes and an abandoning of highest hopes." *Staton v. Boeing Co.*,
 8 327 F.3d 938, 959 (9th Cir. 2003) (quoting *Officers for Justice v. Civil Serv.*
 9 *Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); As the Ninth Circuit
 10 stated in affirming the approval of a settlement in an automotive defect case:

11 Of course it is possible, as many of the objectors' affidavits imply,
 12 that the settlement could have been better. But this possibility does
 13 not mean the settlement presented was not fair, reasonable or
 14 adequate. Settlement is the offspring of compromise; the question
 we address is not whether the final product could be prettier,
 smarter or snazzier, but whether it is fair, adequate and free from
 collusion.

15 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also*
 16 *Officers for Justice*, 688 F.2d at 625 ("The proposed settlement is not to be judged
 17 against a hypothetical or speculative measure of what might have been achieved by
 18 the negotiators.").

21 _____
 22 ¹⁵ Darlene Bennet Dkt. 150-1 p. 29; Kelvin Bennet, Dkt. 150-1 p. 34; Leticia R.
 Ramon Dkt. 161-1 p. 92-93.

23 ¹⁶ Michael Wilson II, Dkt. 150-1 p. 257.

24 ¹⁷ Daniel Thornton, Dkt. 150-1 p. 239 (Mr. Thornton's other objections are
 addressed at greater length, *supra* p. 7-10).

25 ¹⁸ James E. Langford, Dkt. 150-1 p. 186.

26 ¹⁹ Cecil Tuley and Judy Tuley, Dkt. 150-1 p. 245 (request to purchase new engine
 for \$500 for their individual circumstances), Naibori Shaw, Dkt. 150-1 p. 217
 27 (requests new car because Class Vehicle subject to too many recalls and had battery
 28 problems).

1 Here, Class members receive a full refund for past repairs, compensation for
 2 lost value for past sales and trade-ins, and a free Lifetime Warranty to address
 3 defects that may manifest in the future.

4 Others worried the Settlement offered no protection for the future resale value
 5 of their vehicles.²⁰ However, for these objectors, the fact that the Lifetime Warranty
 6 and KSDS stay with the vehicle permanently, and the presence of the trade-in option
 7 with the rebate mitigate these concerns.

8 While it is impossible to craft a settlement that satisfies each and every Class
 9 member, particularly a group of several million people, the objections that have
 10 been raised here provide no basis to reject the Settlement.

11 12 **Objections To Process**

13 One objector, Thomas Barber (Dkt. 150-1 p. 24) believes that the opt-out
 14 deadline should be extended to thirty days after the fairness hearing so that Class
 15 members can study the Settlement Agreement. (*Id.* at 24) But Class members have
 16 had notice since as early as August, and there is no basis to provide additional time
 17 to review it. Mr. Barber also requests that Kia be required to post on its website
 18 whether a specific vehicle has had the KSDS installed. (*Id.* at 27) But class members
 19 only need to go to the National Highway and Traffic Safety Administration and
 20 enter their VIN to see if any outstanding recalls (including the KSDS) have been
 21 performed. Mr. Barber has zero outstanding Recalls. Walsh Decl. at ¶ 6. Mr.
 22 Barber's suggestions do little to improve the information available to Class
 23 members and certainly do not invalidate the existing notice scheme. This objection
 24 should be overruled.

25
 26 _____
 27 ²⁰ Naomi S. Warren, Dkt. 150-1 p. 252 (loss of future resale value compared to
 28 Hondas); Ashley Warring, Dkt. 150-1 p. 255; William Joseph Dill, Dkt. 150-1 p. 53;
 Gordon Deats Dkt. 161-1 p. 18.

1 Mr. Barber is also concerned that the KSDS software update will negatively
 2 impact vehicle performance. (*Id.* at 27-28) Mr. Barber’s claims flow from his
 3 understanding of knock sensors solely based upon accelerometers. (*Id.* at 27)
 4 Hyundai has explained in detail how the knock sensor also has an auditory
 5 component that deals with many of the concerns raised by Mr. Barber. (Dkt. 143-1
 6 at 61-63) A Hyundai engineer further explained the characteristics of the vehicle
 7 when it is placed in limp mode which allows for a maximum speed of 65 miles per
 8 hour until the vehicle is taken to a dealership for repairs, which limits the risk of an
 9 accident. (*Id.*)

11 **Objection of Daniel F. Thornton**

12 Attorney Daniel F. Thornton presents four objections to the Settlement: that
 13 the it does not make Class members like himself whole; that it is inadequate for
 14 New Jersey Class members; that it is duplicative of the *Mendoza* warranty (Dkt.
 15 150-1 p. 232); and that Hyundai should not self-administer the Settlement (*Id.* p.
 16 237).

17 First, Mr. Thornton states that “only a metal-shaving-free engine” could make
 18 him whole. (*Id.* p. 233) But this is exactly what the Settlement is designed to
 19 provide. The engine defect does not manifest itself in the overwhelming majority of
 20 vehicles. The KSDS detects early manifestations so the vehicle may be serviced
 21 under the free Lifetime Warranty before catastrophic engine failure or fire occurs.

22 Second, Mr. Thornton argues that under the New Jersey Consumer Fraud Act,
 23 N.J.S.A. 56:8-1 to -210, “if I were to litigate the same issues ... my likely recovery
 24 would consist of – at a minimum – 300% of the cost of installing a defect-free short
 25 block in my vehicle.” (*Id.*) However, as Mr. Thornton acknowledges, the New
 26 Jersey statute has an “ascertainable loss” standard. (*Id.*)

1 Under Mr. Thornton's theory of the case, he can show ascertainable loss
2 because metal shavings were left in every engine of the class vehicles during the
3 manufacturing process. (Walsh Decl. Ex. 2 p. 60, lines 17-21) These shavings
4 should have been removed by magnets, but the defective manufacturing process left
5 the metal shavings in the engines. (*Id.* p. 37-38, lines 22-1) In actuality, the defect,
6 when and if it manifests at all, causes metal shavings to accumulate in the engines
7 over time in affected vehicles. Mr. Thornton's vehicle passed an engine inspection,
8 but he does not believe it is possible to determine whether the engine is affected
9 without disassembling it. (*Id.* p. 59, lines 7-15) As such, Mr. Thornton admits that
10 individual litigation under the New Jersey statute would be expensive and time-
11 consuming, would require an expert to "disassemble the short block totally," (*Id.* p.
12 61, lines 8-16) and that the monetary loss would be "diminution in value." (*Id.* p. 64,
13 lines 15-16, errata) Recovery under the New Jersey statute is thus expensive and
14 risky. However, Class members could opt out of the Settlement to pursue such
15 claims. For those like Thornton who did not opt out, the Settlement provides a
16 KSDS designed to detect engine problems early, and provides for free repairs under
17 the Lifetime Warranty.

18 Mr. Thornton's third objection is that the Lifetime Warranty is "largely
19 duplicative" of the warranty already offered under the settlement in *In re Hyundai*
20 *Sonata Engine Litigation*, No. 5:15-cv-1685 (N.D. Cal.) ("*Mendoza*"). (Dkt. 150-1,
21 p. 234)

22 The 2017 settlement in the *Mendoza* case provided 10- year/120,000 mile
23 warranties for roughly 885,000 2011-14 Hyundai Sonatas. Plaintiffs' proposed
24 Settlement includes, rather than carves out, those vehicles. The Settlement extends
25 those vehicle warranties for life and gives those Class members another opportunity
26 for reimbursement for repairs and other monetary compensation for events occurring
27 after the expiration of the *Mendoza* claims period, which ended with repairs done to
28

1 those vehicles on or before November 9, 2015. See Settlement Agreement I.E.,
2 II.C.2, II.E.4, II.F.4 and III.14. (Dkt. 128-1)

3 It is true that there is overlap between the 10-year *Mendoza* warranties and the
4 lifetime warranties for the 2011-14 Sonatas. However, rather than duplicating the
5 *Mendoza* remedies, this Settlement improves them by extending the warranties for
6 life and giving those Class Members additional compensation that they would not
7 have had otherwise. In Mr. Thornton's case, his *Mendoza* warranty expired earlier
8 this year, so the Lifetime Warranty is not duplicative. (Walsh Decl. Ex. 2, p. 42,
9 lines 18-19)

10 Mr. Thornton's final objection is that, based on the anecdotal evidence of his
11 father-in-law's experience under *Mendoza*, Hyundai should not be trusted with
12 administering the Settlement. (Dkt. 150-1 p. 237) Under the facts as presented by
13 Mr. Thornton, it appears Hyundai did not pay his father-in-law's claim because it
14 was submitted after the claims period had ended.

15 Apparently, in August 2015, his father-in-law paid for a replacement engine
16 (and was reimbursed at a later time) in his 2011 Sonata, but thereafter experienced a
17 Malfunction Indicator Light ("MIL") alert relating to an O₂ sensor. The Hyundai
18 dealer was unable to resolve the MIL but charged him a diagnosis fee of \$119.00.
19 Then, on November 10, 2015, a third-party diagnosed the problem as a short in the
20 engine wiring harness, caused during the August 2015 engine replacement, and
21 charged him \$418.89 to repair it. The total for these charges totaled \$537.89. (*Id.*)

22 His father-in-law then submitted a reimbursement for this \$537.89 cost under
23 *Mendoza*, but it was denied. Under the terms of *Mendoza*, reimbursement is
24 provided for repairs prior to November 9, 2015, for 2011 and 2012 model year
25 vehicles. Even though his father-in-law's engine was replaced in August 2015, the
26 corrected repair completed by a third-party occurred on November 10, 2015, one
27
28

1 day after the *Mendoza* cutoff. Mr. Thornton's father-in-law can now re-submit this
2 claim for reimbursement under the current Settlement.

3 Mr. Thornton's father-in-law's experience is thus unpersuasive evidence that
4 Hyundai should not self-administer the Settlement.

5 The underlying theme of Mr. Thornton's objection letters and depositions is
6 that he simply wants more or different relief than is offered by the Settlement. He
7 wants a "metal-shaving free engine," (*Id.* p. 233) he wants "300% of the cost of
8 installing a defect-free short block in my vehicle," (*Id.*) he wants "to see Hyundai
9 buy back class vehicles like mine at double their book value ... and then provide a
10 substantial credit – \$10,000 or more – so as to place these drivers in new or newer
11 Hyundai vehicles." (*Id.* p. 239) The \$2,000 rebate offered to Class members who
12 trade in their vehicles for a new Kia or Hyundai is "a nice gesture," but "any dealer
13 worth their salt offers a \$2,000 incentive on a regular basis." (*Id.* p. 237-238) (In
14 actuality the rebate is in addition to any such incentive and applied for directly
15 through Hyundai only after the other trade is completed.) But what one consumer
16 may consider adequate, in Mr. Thornton's words, "depends on the circumstances
17 sometimes and on the consumers' wishes." (Walsh Decl., Ex. 2, p. 78, lines 7-9) As
18 discussed above, "the question we address is not whether the final product could be
19 prettier, smarter or snazzier, but whether it is fair, adequate and free from
20 collusion." *Hanlon*, 150 F.3d at 1027.

21 Mr. Thornton's objections should be overruled.

22 23 **Objection of Arnold L. Levey**

24 Attorney Arnold L. Levey, like Mr. Thornton, objects that the Lifetime
25 Warranty provided by the Settlement is overvalued, "particularly when considering
26 the previous warranty extension resulting from the earlier litigation," and that the
27 cash compensation is lacking. (Dkt. 161-1 p. 87-90).

1 For the same reasons discussed in response to Mr. Thornton's objection, Mr.
2 Levey's views are not a basis to reject the Settlement. The current Settlement
3 applies to 3.1 million Class vehicles in addition to the *Mendoza* class vehicles. Now
4 those *Mendoza* class members receive from this settlement: warranty extensions; the
5 KSDS; and an additional opportunity to submit more recent repair bills or receive
6 compensation related to sales or trade-ins. Thus far Class members have already
7 submitted claims for over \$60 million in cash, so cash compensation is not lacking.
8 See Declaration of Adam Gonnelli, Dkt. 164-2 ¶ 8.

9 Mr. Levey also alleges Class Counsel colluded with Kia to increase their
10 attorney fees and named plaintiff's incentive awards at the expense of the relief to
11 the Class, a practice with which he says he has "personal experience." (Dkt. 161-1
12 p. 88). Mr. Levey's personal experience includes that he states he was paid \$15,000
13 to withdraw his appeal of an earlier Kia class settlement. (*Id.* p.89).

14 Mr. Levey's speculation about collusion, combined with his previous success
15 at holding a settlement hostage²¹, suggests that his objection has goals other than the
16 improvement of an already exceptional settlement. *See, e.g., Snell v. Allianz Life Ins.*
17 *Co. of N. Am.*, Civ. No. 97-2784 (RLE), 2000 U.S. Dist. LEXIS 13611, at *31-32
18 (D. Minn. Sept. 8, 2000) (repeat objectors "maraud proposed settlements -- not to
19 assess their merits on some principled basis -- but in order to extort the parties, and
20 particularly the settling defendants, into ransoming a settlement that could otherwise
21 be undermined by a time-consuming appeals process.").

22 Mr. Levey's collusion allegation is baseless. Attorney fees and incentive
23 awards were not negotiated until after the Settlement was agreed to, and do not
24 reduce the relief to the Class in any way. (Declaration of Matthew Schelkopf, Dkt.

25
26
27 ²¹ Mr. Levey's objection to the *Mendoza* settlement is attached to the Walsh Decl. as
28 Ex. 5.

1 139-1, p. 6-7.) In fact, the agreement on fees and incentive awards was not reached
2 until just before a contested fee application was to be filed.

3 **Objection of Edward A. Maybury**

4 Edward A. Maybury objects to the amount of attorney fees in the Class
5 Notice. (Dkt. 150-1, p. 197-199) Subsequent to the Class Notice, Plaintiffs filed an
6 Unopposed Motion for Class Counsel Fee (Dkt. 139) requesting \$6,900,000 in
7 attorney fees, or 57.5% of the \$12,000,000 maximum attorney fee figure that Mr.
8 Maybury objected to, but not as low as the \$1,200,000 cap that Mr. Maybury
9 suggested. Mr. Maybury described Class Counsel's "intellectual work" involved in
10 pursuing this litigation as "equivalent to whitening out the name of the last corporation
11 tagged with a law ... for their personal enrichment on the backs of consumers." Dkt.
12 150-1, p. 198. In the same paragraph, Mr. Maybury walks back his characterization
13 of Counsel: "I'm not saying they actually whitened out the name of a prior corporation
14 or they have a pattern of litigation against companies with similar flimsy
15 underpinnings or that I have evidence that their motivation is simply money." *Id.*
16 His suggested \$1.2 million cap on attorney fees is thus arbitrary, and does not reflect
17 the number of hours put in by the attorneys prosecuting this case over the last three
18 years, as outlined in the Unopposed Motion for Class Counsel Fee (Dkt. 139) and
19 updated in Plaintiffs' Supplement to Motion for Final Approval of Class Settlement
20 and Motion for Class Counsel Fee and Expense Award and Class Representative
21 Service Awards (Dkt. 164) or the substantial relief offered to the Class under the
22 Settlement. The Supreme Court has long encouraged negotiated fees, and especially
23 fees that are (a) negotiated after settlement terms for the class are agreed to, and (b)
24 paid in addition to the benefits to the class, so as not reduce those benefits. *See, e.g.,*
25 *Evans v. Jeff D.*, 475 U.S. 717, 734-38 n.30 (1986); *Hensley v. Eckerhart*, 461 U.S.
26 424, 437 (1983) (negotiated fees are the "ideal" toward which parties should strive).
27 The parties did that here.

1 Additionally, Mr. Maybury says he has “received [the] considerable
2 compensation for [his] prior objection to a class action law suit” of “sleeping well at
3 night knowing I objected to what has been called ‘legal blackmail’ and ‘hydraulic
4 pressure.... to settle’ pursued by class action legal firms.” (Dkt. 150-1, p. 199)
5 (ellipsis original) It is evident from his letter that Mr. Maybury’s real objection is to
6 class action legal practice in general and class action lawyers in particular, and not
7 to the specifics of this case. This can further be seen by reviewing his objection in
8 the Subway matter that he entitles “subway money grab.” Decl. of Bonner Walsh,
9 Ex. 6.

10 Mr. Maybury’s objection is without merit.

11
12 **Objection of John H. Metz**

13 John H. Metz objects that the ‘limp mode’ associated with the KSDS update
14 is unsafe because it prevented him from keeping up with the flow of highway traffic,
15 putting him in a dangerous and fearful situation. He states that he drove for **11 hours**
16 **with the engine light on** and the vehicle in limp mode, and was informed the next
17 morning when he took his vehicle in for service that “this was Hyundai’s mode to
18 have a governor on the engine till you get to a Hyundai dealer.” (Dkt. 150-1 p. 201-
19 202.)

20 Some time after this notice Mr. Metz’ engine light came on again, the vehicle
21 again went into limp mode, and he again proceeded to drive it for another 11 hours
22 in that condition. (*Id.*) His engine was then replaced by Hyundai with a
23 reconditioned engine. (*Id.*) Mr. Metz’ behavior is akin to contributory negligence
24 and demonstrates the need for provisions such as Extreme Neglect in the Settlement.

25 Mr. Metz wants compensation for his “significant emotional distress, fear and
26 inconvenience.” (*Id.* at 203). If so, he should have opted out of the Settlement in
27 order to pursue those individual claims.

1 Mr. Metz, an attorney from Ohio, also demonstrates a fundamental
2 misunderstanding of the class action process. He objects to the necessity of opting
3 out of the Settlement to preserve individual claims based on the same legal issues,
4 and states incorrectly that the Settlement forecloses suits for personal injuries or
5 death. (*Id.*) Mr. Metz expresses worry about Class Counsel’s compensation,
6 wondering what the contingency fee for one third of a repair is, and presuming legal
7 fees will be determined on a common fund standard. (*Id.* at 204) As stated above,
8 attorney fees were negotiated subsequent to and separate from the Settlement, and
9 do not reduce the value of the Settlement.

10 The objections of Mr. Metz should be overruled.

11
12 **Objection of Knight Motors, LP and Doman Auto and Marine Sales, Inc.**

13 Last year, Hyundai sued objector Knight Motors, LP (“Knight”) in
14 Pennsylvania for fraud.²² Allegedly, Knight’s practice is to buy hundreds of working
15 2011-14 Hyundai Sonatas for a few a thousand dollars each at auction, damage the
16 engines, and then present them to Hyundai for repair under the *Mendoza* settlement.
17 Hyundai, upon examining the damaged cars, found that it was too expensive to
18 repair them, and bought them back at several times Knight’s purchase price.
19 Knight’s efforts earned them the distinction of the number four ranking on *Auto*
20 *Dealer Today*’s “Top 10 Fraud Stories of 2019.”²³ Knight is not shy about its
21 practices. Knight itself describes its behavior as a pattern of “purchasing 2011-2014
22
23

24 ²² Sabatini, Patricia, “Hyundai alleges local dealers damaged car engines for Profit,”
25 Pittsburgh Post-Gazette, Sept. 27, 2019. ([https://www.post-](https://www.post-gazette.com/business/money/2019/09/27/Hyundai-dealers-damaged-car-engines-profit-Pantelis-Doman-Knight-Motors/stories/201909260178)
26 [gazette.com/business/money/2019/09/27/Hyundai-dealers-damaged-car-engines-](https://www.post-gazette.com/business/money/2019/09/27/Hyundai-dealers-damaged-car-engines-profit-Pantelis-Doman-Knight-Motors/stories/201909260178)
27 [profit-Pantelis-Doman-Knight-Motors/stories/201909260178](https://www.post-gazette.com/business/money/2019/09/27/Hyundai-dealers-damaged-car-engines-profit-Pantelis-Doman-Knight-Motors/stories/201909260178) last visited Nov. 3,
28 2020).

27 ²³ <https://www.autodealertodaymagazine.com/359842/top-10-fraud-stories-of-2019>
28 last visited Nov. 3, 2020.

1 qualifying Hyundai Sonatas *en masse*” and presenting them to Hyundai dealerships
2 for repair under the *Mendoza* settlement. (Doc. 158 p. 8-9).

3 Apparently, Knight views this settlement as an attack on their business plan.
4 Knight devotes substantial real estate in its objection to *Mendoza*, and characterizes
5 this settlement as a nefarious attempt to get around Hyundai’s responsibilities under
6 the *Mendoza* settlement. This settlement is, in Knight’s words, “intentionally
7 designed so that Hyundai could stop what [Knight’s principal] Mr. Pantelis (and
8 others like him) are attempting to do.” (Doc. 158 p. 19). Knight complains that
9 “although Hyundai could have excluded certain owners of 2011-2014 Hyundai
10 Sonatas from the Class, Hyundai did not do so.” (Doc. 158 p. 4-5). Knight further
11 complains that Hyundai did not exclude commercial entities in another settlement
12 “where similar defects are alleged.” (Doc. 158 p.19)²⁴

13 In short, Knight’s objection is not an attempt to improve the quality or
14 fairness of the Settlement. It is just a continuation of Knight’s feud with Hyundai.

15 Knight relies on a limited reading of the definition of Exceptional Neglect to
16 require that the KSDS update be installed within a 60-day window. Under the
17 Settlement Agreement, the “Lifetime Warranty” applies to “those Class Vehicles
18 owned by individual consumers that have completed the KSDS update in connection
19 with Defendants’ now-ongoing product improvement campaigns described herein.”
20 (Doc. 128-1 I.M). “Exceptional Neglect” is shown if a Class member fails to have
21 the KSDS update installed within 60 days of the Notice Date or the mailing of the
22 KSDS campaign notice, whichever is later. (*Id.* I.J) Read together, this means that

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25 ²⁴ Knight alleges the defects are similar in *Brown v. Hyundai Motor America*, No.:
26 2:28-cv-11249 (D.N.J. Sept. 27, 2019). However, the defect there is wholly
27 unrelated and involves a different part of the engine and the resolution requires no
28 knock sensor. The operative complaint in that matter is attached to the Walsh Decl.
as Ex. 4.

1 the Lifetime Warranty applies to vehicles that have had the KSDS update at any
2 time prior to 60 days after the Notice Date.

3 Knight also claims that “car dealers and auction houses or finance companies
4 serve as essential clearinghouses for recall implementations in the US and are the
5 most likely to submit cars in accord with the settlement agreement.” (Doc. 158 p.
6 18) Whether this is true for auto dealers in general, it is not true for Knight. Of the
7 162 VIN numbers submitted by Knight, only 19 of the vehicles have had the KSDS
8 update and have no open recalls. Walsh Decl. at ¶ 5. The remaining 143 vehicles all
9 have open recalls, and most have multiple open recalls; in total there are 530
10 outstanding recalls for these vehicles. The worst two examples have 10 open recalls,
11 some dating back to 2013. (*Id.*) On each of the non-updated vehicles, the notice date
12 for the KSDS campaign was August of 2018. (*Id.*) Knight’s objections regarding
13 selling vehicles with known defects to the public is therefore disingenuous. (Doc.
14 158 p. 18) Knight suggests that a proper definition of Exceptional Neglect would
15 include a period of two years without performing the KSDS update. (Dkt. 158-1 p.
16 343) On their own terms, they have had enough time to perform the update.

17 In their other arguments, Knight estimates the number of vehicles which have
18 had the KSDS installed to be “fewer than 20%.” (Doc. 158 p. 25). In fact, Hyundai’s
19 updated responses to Plaintiffs’ Interrogatories show that the KSDS update has been
20 installed on more than 77% of all Hyundai Class Vehicles. Declaration of Adam
21 Gonnelli in Support of Final Approval of Class Settlement at ¶¶ 6, 19 (Dkt. 143-2),
22 (Dkt. 164-2 at ¶¶ 14). Knight’s concerns about a “bottleneck” whereby Defendants
23 could prevent the timely installation of the KSDS update and then deny coverage are
24 unfounded. (Dkt. 158 p. 22)

25 CONCLUSION

26 As laid out above, the objection rate to the Settlement is exceedingly small,
27 and none of the objectors have laid forth compelling reasons not to approve the
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1 Settlement, which provides substantial benefits to the class. As such, the objections
2 should be overruled.

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1 Dated: November 6, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bonner C. Walsh, hereby certify that on this 6th day of November, 2020, I caused the foregoing to be filed using the Court's CM/ECF system, and thereby electronically served it upon all registered ECF users in this case.

By: /s/ Bonner C. Walsh
Bonner C. Walsh